

DECRETED

June 5, 1975
9:30 o'clock, a.m.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE MAGNAVOX COMPANY, etc., et al.,)

Plaintiffs,)

- v -)

BALLY MANUFACTURING CORPORATION,)
etc., et al.,)

Defendants.)

CONSOLIDATED
CIVIL ACTION NOS.

74 C 1030

74 C 2510

FILED

JAN 13 1976

H. STUART CUNNINGHAM, CLERK
UNITED STATES DISTRICT COURT

CONTINUED DEPOSITION

of
THOMAS A. BRIODY

THOMAS K. CAMPBELL

Official Reporter

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Thursday, June 5, 1975

9:30 o'clock, a.m.

The deposition of THOMAS A. BRIODY resumed
pursuant to adjournment.

PRESENT:

MR. ANDERSON
MR. WILLIAMS

MR. WALSH
MR. KATZ
MR. THREEDY
MR. GOLDENBERG
MR. RIFKIN

MR. ANDERSON: I have one threshold matter which we might attend to.

Yesterday, late in the day, you asked us to check I think, Seeburg Briody Deposition Exhibit 24, a longhand note of Mr. Briody's, and advise you of, in somewhat greater detail, of the deleted portions. And we did that, and both of those deletions relate to conversations with me and mention me by name.

And Mr. Briody -- you can ask him -- but he believes that during the conference he actually phoned me and we had a brief discussion, and he made an entry about that phone conversation. And we do consider it attorney-client privileged communication. That is, the deletion to "B" and the small deletion to the left of the introductory paragraph.

MR. GOLDENBERG: All right. Are there any deletions on page 2 of that exhibit? I think there might be.

MR. ANDERSON: I am sorry. I did not look at page 2 of the document. While I believe they are the same, I didn't look, and I certainly --

MR. GOLDENBERG: For the moment, let's assume they are the same. But you will look at them?

MR. ANDERSON: But I will confirm or deny my statement that they are the same -- confirm or admit

error, I guess is the better term. I will advise you.

MR. GOLDENBERG: This is a continuation of Mr. Briody's deposition which started yesterday. And the witness has been sworn. We will continue as before.

THOMAS A. BRIODY,
called as a witness by the defendants, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION (Resumed)

BY MR. GOLDENBERG:

Q Mr. Briody, when we closed yesterday's testimony, the last topic we were inquiring about were the various proposed or offered license agreements to a number of companies. Do you recall that, sir?

A Yes.

Q Could you tell me, to the extent that you know, the business of those companies? If they are in the same business or essentially the same business, as far as you know, might be only necessary to describe the business.

A Well, I believe, Mr. Goldenberg, that most of the companies that we talked about yesterday that we had sent offers to are all in the business of manufacturing coin-operated type of amusement games.

Q There may be other businesses, but the licensing

activity, proposed licensing activity, your negotiations with them, if I understand it, was in connection with that kind of business, the coin-operated game business. Is that correct?

A I believe it was.

Q Do you have any questions in your mind on that?

A Well, the one company that I was contacted by the lawyer of, Mr. Kucera -- I believe it was J.R.W. Electronics -- it was my impression they were about to go into a business and perhaps were not exactly there yet. This was a company that was embryonic, it was just being formed.

Q Well, do you know what business they were about to go into?

A No, sir. Well, yes. I assume that the business they were going to go into involved coin-operated amusement games.

Q Could you give me your understanding of coin-operated amusement games?

MR. ANDERSON: I object only on vagueness. Of what -- a definition of that term?

MR. GOLDENBERG: Well, it shouldn't be vague.

MR. ANDERSON: Well, read the question, then.

(The record was read.)

MR. ANDERSON: I still think it is extremely vague. Do you mean his knowledge of the circuitry?

MR. GOLDENBERG: No, sir. The nature of the product.

I can only say that it shouldn't be vague. Mr. Briony proposed it as a statement in these license agreements here.

MR. ANDERSON: You want a definition of the term?

MR. GOLDENBERG: As he understands it.

MR. ANDERSON: That is what I asked.

MR. GOLDENBERG: I thought that is what I asked.

BY THE WITNESS:

A Well, coin-operated amusement game, to me, would be a game that is used in a public place, a commercial type of game, the operator of which inserts a coin or a token in order to play the game.

BY MR. GOLDENBERG:

Q Would one class of such games be what are referred to by some as "video games"?

A One class would be coin-operated type of video games.

Q Is Magnavox in the coin-operated game business?

A No.

Q Is Sanders Associates, to your knowledge?

A No, with one exception. I am aware of the fact that Sanders developed an experimental type of coin-operated type of video game some months ago and they were trying this out somewhere in a public place. But to the best of my knowledge, they are not in the business as such.

Q Do you know what happened as a result of that tryout? Are they still trying it out, has the project been discontinued, or what?

A I really don't know, Mr. Goldenberg.

Q You recall yesterday we inquired into negotiations between Magnavox and Seeburg, negotiations or discussions, and in which you met at various times with me and at various times with other people representing Seeburg. I believe you did meet at various times with persons other than myself representing Seeburg in these negotiations, isn't that true?

A Yes. I believe it was only one specific occasion that you were not present.

Q In any of those meetings, whether it was one at which I was present or the one at which I was not present, were counter-offers or proposals made to you on behalf of Seeburg?

A What do you mean by a "counter-proposal," Mr. Goldenberg?

Q Well, a statement or plan made by one party to another in order to settle a controversy or reach an agreement with respect to some matter or another.

A If I interpret your term "counter-proposal" as meaning a response to which you would have expected me on behalf of Magnavox to either accept or refuse as a complete counter-proposal or as a complete counter-offer, my answer to your question would be no.

But perhaps you would like --

Q Is the operative word "complete"? Is that why you are saying, "No"?

A Well, Mr. Goldenberg, at the various meetings which I recall, numbers were discussed, royalty figures were discussed, but there was always some other thing or unfinished items that required additional discussion before any complete counter-proposal would have been logically considered on behalf of Magnavox.

Q All right, sir. Well, if I may characterize these counter-proposals as partial counter-proposals, were any of those partial counter-proposals acceptable to Magnavox?

MR. ANDERSON: Well, I object only to the

generality of it. But I think if you can pin down "counter-proposals" one at a time and find out, I think you will have a more accurate record. Because the construction that you may place on the term "partial counter-proposal" may be totally different from what the witness places.

MR. GOLDENBERG: I am letting my word or phrase "counter-proposal" be a shorthand way of accepting his statement. If I understood it correctly, in essence it is that they were incomplete, there were some terms or conditions which remained to be resolved by the parties.

And I simply want to -- I do not want to spend a lot of time on this, I don't think it is worth it. But I think there were partial counter-proposals made. I do not -- and I simply want to find out whether or not -- or have the record show, because I think I know the answer already -- that those partial counter-proposals were not acceptable to Magnavox.

MR. ANDERSON: Well, to the contrary. I think the documents evidence that certain partial counter-proposals were acceptable. That is what troubles me about the vagueness of the question.

MR. GOLDENBERG: Perhaps, I would gather, we are reading the documents in a different way. And we will go to the documents, then, and let them show what the fact is.

If you give me a moment, I will put these in order, so I think they will make more sense that way.

(Discussion off the record.)

MR. GOLDENBERG: Some of these documents are undated. But I have organized them in the best sequence that I can from my own recollection of the events. So I would ask the reporter to mark Seeburg Briody Deposition Exhibit 25, three pages of handwritten notes.

(Seeburg Briody Deposition No. 25 was marked for identification, 6/5/75,C.L.)

BY MR. GOLDENBERG:

Q Mr. Briody, I show you Exhibit 25, and I ask you if you can identify that?

A Yes. Mr. Goldenberg, this appears to be a copy of some notes I took at a meeting with you that I recall took place either in the early summer or late spring of 1973.

Q That is my recollection, too, sir.

To the extent that you recall that meeting, do those notes accurately record the proceedings at that meeting as you recall them?

A In a fragmentary way they do. Of course, I am sure when you take notes at a meeting, you do not have an opportunity to copy down everything.

Q Perhaps I should put it: Do they accurately record those things you felt worthy of being recorded, or as far as you were concerned?

A I would say they certainly appear to indicate the highlights that I wanted to record.

MR. GOLDENBERG: I would like the reporter to mark as Seeburg Briody Deposition Exhibit 26 a memorandum apparently by Mr. Briody, dated November 21, 1973.

(Seeburg Briody Deposition Exhibit No. 26 was marked for identification, 6/5/75,C.L.)

BY MR. GOLDENBERG:

Q Mr. Briody, could you identify Exhibit 26?

A Yes. It is a copy of a letter, of a file memo which I wrote on or about November 21, 1973. It refers to a telephone conversation which I had with you in response to a letter that I wrote to you on November 12, 1973.

Q As far as you can tell at this time, is this an accurate recording of your understanding of that telephone conversation?

A Without having had the opportunity to look at the other document that this refers to, it should reflect the highlights of the telephone conversation.

It also refers to a telephone conversation which I had received on or about the same day from Mr. Nicastro, chairman of the board of Seeburg.

MR. ANDERSON: How do you spell that?

THE WITNESS: I have it misspelled in this letter. It is, I believe, N-i-c-a-s-t-r-o. In the letter it is spelled Micastro, instead of Nicastro.

BY MR. GOLDENBERG:

Q I note that copies were directed to an R. Fritsche, F-r-i-t-c-h-e. Could you identify Mr. Fritsche?

A Mr. Fritsche at that time was a produce manager of certain areas of the consumer electronics group, which included the Magnavox Odyssey game.

Q Is he still employed by Magnavox?

A Yes.

Q In a different capacity?

A I believe in a slightly broader capacity. But his responsibilities still include the Odyssey-type games

of Magnavox.

Q Would you identify Mr. K. Niemann, N-i-e-m-a-n-n?

A Mr. Niemann was a vice president of the consumer electronics group of Magnavox -- he was not a corporate vice president as such -- who at that time had an interest in marketing.

I am not exactly sure, Mr. Goldenberg, I do not recall why he was marked for copy of this, other than the fact that he might have had responsibilities for off-shore marketing of Odyssey games. He was in the international organization of Magnavox for a while.

Q Is he still employed by Magnavox?

A No, he is not.

Q Do you know where he presently works or resides?

A No. I am not sure.

Q Is he in the Fort Wayne area, to your knowledge?

A No. I don't think he is in the Fort Wayne area. He did live there, but I heard that he moved away.

Q Who is Mr. R. Seeger, S-e-e-g-e-r?

A Mr. Seeger was employed at that time as a patent attorney for Magnavox.

Q I take it he is no longer employed?

A That is correct.

Q Do you know where he -- when did he leave the employ of Magnavox?

A In September of 1974.

Q Do you know where he presently works or resides?

A I know where he presently works.

Q Could you tell me that?

A He is with the patent law firm in Fort Wayne of Gust, Irish, Jeffers and Rickert.

Q From my review of documents to be made available to me, I came to the conclusion that Mr. Seeger was a principal negotiator in arriving at the agreement between Sanders and Magnavox, the agreement of January, 1972. And perhaps the word -- I overstated when I said he was a "negotiator," but he had a principal role in that negotiation. Is that correct?

MR. ANDERSON: I object only on the ground that this witness has no direct knowledge of that, as far as you have established any foundation. He was not in the employ at the time --

MR. GOLDENBERG: He was not in the employ at the time, and perhaps you are right, Mr. Anderson. If the witness would care to answer on the basis of his

understanding, if that would be satisfactory to you.

MR. ANDERSON: I will permit him to answer it,
if he can.

BY THE WITNESS:

A My best judgment, in response to your question,
would be that he was not the principal negotiator.

BY MR. GOLDENBERG:

Q In your best judgment, who was the principal
negotiator representing Magnavox in that negotiation?

A A gentleman by the name of Gerry Martin,
M-a-r-t-i-n.

Q Do you know what position he held with Magnavox
at the time of that negotiation?

A No, I really don't, Mr. Goldenberg. I believe
you might have some documents that so indicate.

Q Yes, sir, I do, which would indicate that he
was a vice president of the company. Do you know that --

MR. ANDERSON: Off the record.

THE WITNESS: Could we go off the record for a
minute?

(Discussion off the record.)

BY THE WITNESS:

A I believe that if the documents you have
indicate that Mr. Martin was a vice president, he was

probably serving in the capacity of a vice president for the consumer electronics corporation, or sub-corporation of Magnavox, because he was not, to the best of my knowledge, he never was a corporate vice president of the Magnavox Company.

MR. ANDERSON: Just so the record will be clear, I do not think there is such a thing as the "Consumer Electronics Corporation." It is just a group or division.

THE WITNESS: Off the record?

MR. GOLDENBERG: On or off, I don't care.

(Discussion off the record.)

BY MR. GOLDENBERG:

Q Let me go on the record with a question, then.

Mr. Briody, while we were off the record, we were discussing the status of Mr. Gerald Martin as an employee or an officer of the Magnavox Company. And certain understandings were reached. And you indicate that you can now make a statement in that respect as to what his capacity was.

A I believe that at the time that the Sanders-Magnavox license agreement was entered into in January of 1972, Mr. Martin was not a corporate vice president of the Magnavox Company. He was, or he had the title of,

vice president of the consumer electronics -- of Magnavox' consumer electronics company.

Q If I understand it, at this time you do not know whether the Magnavox consumer electronics company was in fact a legal corporation?

A At that point in time, yes. I do not know.

Q Do you know what the fact is today?

A Well, I know that it does not function as a separate autonomous corporation, Mr. Goldenberg.

Q I see, sir.

Now, is Mr. Martin still with the company?

A No.

Q When did he leave?

A I believe that Mr. Martin left Magnavox in April of 1974.

Q Do you know where he presently works or resides?

A I think I do. I believe he is the president of Utah Loudspeaker Company, which is located in Huntington, Indiana.

Q Would it be a correct understanding that the Magnavox consumer electronics company was a part of the consumer electronics group of the Magnavox Company?

A I believe it was the same thing as the consumer electronics group, Mr. Goldenberg.

Q I see, sir.

Mr. Briody, a moment ago I showed you Exhibit 26, and I asked you whether that accurately recorded the substance of the telephone conversations and other events of that time as you presently recall them. And I am not sure that you answered that question.

MR. ANDERSON: Well, I object to that question as vague. You asked him specifically about a telephone conversation with you, and he testified as to that, and he volunteered about a telephone conversation, I believe, with Mr. Nicastro.

Is that the one --

THE WITNESS: Which is referred to in this.

BY MR. GOLDENBERG:

Q Well, does it accurately reflect the telephone conversation with Nicastro, as well as the telephone conversation with me?

A Well, Mr. Goldenberg, no memorandum written after a telephone conversation always can accurately or would accurately reflect everything said.

However, I do not, in reading this, I do not know of any reason, you know, why it doesn't reflect all the highlights of the telephone conversation.

MR. GOLDENBERG: Thank you, sir.

I would like the reporter to mark as Seeburg Briody Deposition Exhibit 27 a copy of what is apparently a memorandum by Mr. Briody dated December 4, 1973.

(Seeburg Briody Deposition Exhibit No. 27 was marked for identification, 6/5/75,C.L.)

BY MR. GOLDENBERG:

Q Mr. Briody, I hand you Exhibit 27 and I ask you if you can identify it?

A Yes.

Q Is it a memorandum prepared by you?

A Yes. It is a copy of such a memorandum.

Q Could you identify Mr. R. E. Wiles, W-i-l-e-s?

A Yes. Mr. Wiles was the supervisor in a product planning sense of -- in the consumer electronics group or organization of Magnavox, to whom Mr. Fritsche reported.

Q Is Mr. Wiles still employed by Magnavox?

A No.

Q When did he leave the employ of Magnavox?

A I am not sure, Mr. Goldenberg, either. I would say two to three months ago.

Q Do you know where he presently works or resides?

A No.

Q Can you identify Mr. G. G. Martin, M-a-r-t-i-n?

A Yes. That is the Gerry Martin I talked about earlier, who participated in negotiating with license agreement between Sanders and Magnavox.

Q And the Mr. S. J. Rozel, whose name appears on the memorandum, is the Mr. Rozel who is presently vice president and general counsel of the Magnavox Company, is that correct?

A Yes. He is also secretary.

Q Can you take a moment and look at Exhibit 27 and tell me if, in accordance with your present recollection, this memorandum accurately records the substance of the meeting referred to?

A I don't know of any reason, Mr. Goldenberg, why it wouldn't accurately record what it refers to.

However, I note that this is in essence a letter to Mr. Wiles and Mr. Fritsche. And there could conceivably be some things that were discussed at the meeting that I did not cover in this particular letter.

Q Do you recall any such things at this time?

A No. But this was a year and a half ago, which seems like a long time now.

Q But your testimony is that to the extent that you do recall, that the events or conversation recorded there are accurately recorded?

A Yes.

MR. GOLDENBERG: I would like the reporter to mark as Seeburg Briody Deposition Exhibit 28 a memorandum or letter apparently prepared by Mr. Briody and dated February 6, 1974.

(Seeburg Briody Deposition Exhibit No. 28 was marked for identification, 6/5/75,C.L.)

BY MR. GOLDENBERG:

Q Mr. Briody, I show you Exhibit 28 and ask you if you can identify that; and if you can, will you do so?

A Yes. I recall this memo.

Q Could you identify it or describe it, sir?

A It refers to a telephone conversation that I had with Mr. Wallach, vice president and general counsel of Seeburg.

Seeburg had previously indicated a strong interest in obtaining an exclusive license, sub-license from Magnavox, concerning the Sanders patents. And a meeting had been scheduled in Fort Wayne on or about the time of this telephone conversation.

Mr. Wallach called to indicate that Seeburg had decided against such an arrangement, and he requested that we send him a sub-licensing agreement.

Excuse me. That was not a memo, Mr. Goldenberg.

I see that appears to have been a letter to Messrs. Jones, Martin and Silvey, who were scheduled to be at the meeting, to tell them the meeting was not going to take place.

Q I see, sir.

Could you identify Mr. Jones?

A Yes. Mr. Jones at that time was the comptroller of the consumer electronics group of Magnavox.

Q Is he still in the employ of Magnavox?

A The other day I was told that he was going to leave to join a company in Cincinnati. I am uncertain whether or not he has already left or is still today an employee of Magnavox.

Q If he has left or he is about to leave, was he comptroller or will he have been comptroller up to the time of his departure?

A Yes.

Q Do you know the name of the company that he is going to join?

A No, I do not.

Q Could you identify Mr. Silvey?

A Yes. Mr. Silvey is the director of engineering of the consumer electronics group.

Q Is he still the director of engineering?

A Yes.

Q And he held that position in February of 1974?

A He held the same responsibilities. He may have had a slightly different title.

Q Can I conclude from your earlier statement, in which you told about the telephone call from Mr. Wallach, the memorandum therefore accurately records the substance or essence of that telephone conversation?

A No. I don't think that would be a proper assumption, Mr. Goldenberg. Because that really is not a memorandum. That is really an announcement that a meeting that was intended would not take place, because of the telephone conversation with Mr. Wallach.

There may be some other things that were discussed with Mr. Wallach that would not be in that memo.

Q Do you at this time recall any other things which were a part of that telephone conversation with Mr. Wallach?

A No, I do not.

Q But as far as the memorandum goes, it is an accurate recording, is that correct? I understand your testimony is that there may have been other things discussed which are not reflected in the memorandum. But as far as it does record the substance of the conversation, it is correct or accurate?

A Well, as I recall it, I would like to

characterize the conversation as I recall it with Mr. Wallach in further detail.

It sounded to me as though, as a result of Seeburg's having carefully considered the idea of an exclusive license, and then decided no, that what Mr. Wallach was saying was, "Send us the license agreement and we will sign it very soon." I think that was the intent of the conversation that is not really there in words in that memo.

It says: "Accordingly, he has requested that we send them our sub-licensing agreement for their approval."

Q Do you recall your response to that request on his part?

A You mean over the telephone?

Q Over the telephone.

A I think it was that we will, or we would very soon.

Q And was that the proposed license agreement sent later on in February of --

A I believe it was February 7.

Q With the letter Exhibit 13?

A Yes, I believe it was. The copy of that agreement was sent to you, to your office, together with a copy of that letter.

MR. GOLDENBERG: I would like the reporter to mark for identification a letter or memorandum apparently by Mr. Briody dated January 14, 1974 as Exhibit 29.

(Seeburg Briody Deposition Exhibit No. 29 was marked for identification, 6/5/75,C.L.)

BY MR. GOLDENBERG:

Q Mr. Briody, I show you Exhibit 29, and I ask you if you can identify it; and if you can do so, would you please?

A Yes. This is a copy of a letter that I sent to Mr. Wiles on or about January 14, 1974.

Q I notice Mr. M. Bollman is apparently marked for a copy of that letter.

A Yes.

Q I do not believe we have identified him before. Could you do that, please?

A Mr. Bollman at that time was a corporate vice president in charge, primarily, of advertising. And I believe that that is still his title. He may have some additional functions, but principally he is vice president of advertising.

One of the reasons why he was copied was that -- for that letter -- was that he was present at a meeting in

New York with Seeburg involving Mr. Nicastro, Mr. Wallach and myself. Seeburg had requested that we provide a vice president at the meeting, because Nicastro was going to be there.

Q Could you identify Mr. T. Hafner, H-a-f-n-e-r?

A Yes. That is Mr. Thomas Hafner, who is counsel for the consumer electronics group of Magnavox.

Q Mr. Hafner is a lawyer, I take it?

A Yes.

Q Is he still employed in that capacity by Magnavox?

A Yes.

Q Would he report to Mr. Rozel?

A Yes.

MR. GOLDENBERG: Mr. Anderson, I have a question. Has some portion of page 2 of Exhibit 29 been deleted?

MR. ANDERSON: Yes.

MR. GOLDENBERG: Could you tell me the basis for that deletion?

MR. ANDERSON: Yes. I think Mr. Williams and you discussed this production and indicated that various of the documents would be masked where anything other than facts were involved, and speci-

fically, of course, legal opinions. And that subject matter does relate to a legal opinion.

BY MR. GOLDENBERG:

Q Mr. Briody, I ask you to take a few moments with Exhibit 29 and state whether or not, according to your present recollection, it accurately records the events that are recorded there?

A I don't know of any reason why it doesn't record everything accurately to which it refers.

Mr. Goldenberg, I note there is a number here that was corrected, but I think that was a later -- that was a typo when it was typed up.

Q Do you recall anything about that meeting which is not recorded or reported in Exhibit 29?

A Not at this point in time.

MR. GOLDENBERG: I ask the reporter to mark as Seeburg Briody Deposition Exhibit 30 a copy of some handwritten notes, from which portions have been apparently deleted.

(Seeburg Briody Deposition Exhibit No. 30 was marked for identification, 6/5/75,C.L.)

MR. GOLDENBERG: Mr. Anderson, is my understanding correct that portions of those documents have been deleted before they were produced to us?

MR. ANDERSON: Yes. Your observation is correct. There have been deletions on both pages of the document marked Exhibit 30, for the reasons that I have already indicated.

MR. GOLDENBERG: Is there any way of getting a better understanding of the material written in the margin on the copy we have?

MR. ANDERSON: We do not have a better copy here. We may be able to find the -- I am sure we can find the document from which this was prepared, which may be more legible. I will certainly try.

And Tom, Mr. Briody, perhaps can read it.

I believe it is his handwriting.

BY MR. GOLDENBERG:

Q Mr. Briody, I show you Exhibit 30, and I ask you if you can identify it; and if you can, will you?

A This document is a copy of two pages of notes that strike me as rather miscellaneous, Mr. Goldenberg. I am not sure when they were taken.

It is, in fact, two documents. The first page of Deposition Exhibit 30 bears notes on the bottom that indicate to me that they were made after the meeting that we had with you, Mr. Anderson and you, in your office.

Q That would have been in May of 1974?

A I cannot be sure.

It also looks as though it shows some notes relating to a letter that was written by Mr. Hughes to Magnavox, Mr. Hughes of Seeburg.

The second page of this document, I am not sure what it relates to.

Q Could you read or attempt to read the writing in the margin on page 1?

A I can read some of the words, Mr. Goldenberg, but I am missing some of them.

Q I appreciate your problem, sir.

A If you would like me to try --

Q Do as best you can.

A "If we are" -- and then there are two words I cannot read -- "this stage of an adversary procedure Don Wallach says he is reluctant to talk to me without going through Mel Goldenberg."

It appears to me the first page of this document relates to a period in time when I must have had a telephone conversation with Mr. Wallach. Perhaps you had suggested that I call him directly and to follow up on something that we had been discussing, and he did not want to provide any comments. He suggested that I contact you.

Q That accords with my recollection that, following

our meeting in May, I suggested that you call Mr. Wallach directly.

Does that accord with yours?

A That may be correct. I would like to review this document further in its original sense to be sure.

Q We all would, sir.

Do you have any present recollection as to what the material deleted referred to in a general sense? I understand --

A I will make a guess that the material deleted related to written words which expressed my thinking preparatory to a telephone conversation. In other words, a planned reaction that I might have had to what I was anticipating as a response from you or Seeburg relative to the last proposal that had been made.

Q And you pointed to the entry recorded in the lower left-hand corner of the first page of Exhibit 30, is that correct?

A Yes.

Q At that time, you were conducting negotiations with Seeburg on behalf of Magnavox, were you not?

A Yes.

Q Would you agree with me that, even though that document is not dated, that those telephone conversations

or telephone conversation probably took place in May or June of 1964?

MR. ANDERSON: '74.

BY MR. GOLDENBERG:

Q '74, forgive me.

A At this point in time, yes, I would say they probably did.

Q Well, to help you on that, I think we do have --

A Another memorandum.

Q -- another memorandum --

A I believe you are correct.

Q -- which has been marked as Exhibit 23, dated May 17, 1974. And if you look on the second page of that, I think you will see essentially the same offer to license Seeburg.

A Yes.

Q And I simply refer to that as some attempt to fix the date of this document.

A I think most of the contents of this document, the first page of this document -- because the second page, as I have said, is somewhat mysterious to me, I don't know how it became attached.

Q I just attached it because I did not know what else to do with it.

A However, it would appear to me this document would have to be prepared after the meeting on May 17, 1974.

MR. GOLDENBERG: Mr. Anderson, I would ask you to consider, in the light of Mr. Briody's response about what was recorded in the deletion portion of the first page of Exhibit 30, whether a claim of privilege is still appropriate.

MR. ANDERSON: Mr. Goldenberg, you and I discussed, at least briefly, the problems that we saw in deposing a lawyer, and Mr. Briody, specifically. And then you and Mr. Williams, as I understand it, reached an agreement that we would produce all documents and this witness for a factual inquiry, and that you were not interested in exploring into opinions and anything other than facts.

And this witness has clearly indicated that the entries in that page are not related to facts, but thoughts that he had as -- whether you characterize it as a lawyer or negotiator, the two cannot really be separated, I don't think, even though I recognize your right to explore into the business activities, even though Mr. Briody is a lawyer.

So I do believe that we had an understanding

on the basis of which these documents were being produced and were being partially masked.

MR. GOLDENBERG: Well, I do not question that we had an understanding that I would not seek to inquire into legal opinions. And I do not believe I am violating that understanding.

Mr. Briody's testimony, if I recall it correctly, was that that had to do with his anticipated responses.

MR. ANDERSON: He said he was guessing, even at that. But I think generally you are correct, that was part of his testimony.

MR. GOLDENBERG: An anticipated response in a negotiation, I do not see how that becomes a legal opinion.

MR. ANDERSON: It certainly is the thoughts of a lawyer, perhaps, and perhaps the thoughts of a negotiator.

I think we will look at the document again and make a follow-up decision. But I certainly at this point do not agree that we must release the full document based on the testimony here today.

MR. GOLDENBERG: Well, I can, of course, at this time ask no more than you do that.

If you do that and your view remains the same, I would consider that I would have the right to seek production of that kind of deletion and others which may be in a similar category, and here I am talking generally where the material deleted had to do with an anticipated response or some recorded fact or had to do in any way with a negotiating position or tactic and was not concerned with recording a legal opinion that Mr. Briody gave to his client.

So with that, we will, of course, continue.

I ask the reporter to mark as Seeburg Briody Deposition Exhibit 31, four pages of handwritten notes from which some portions have apparently been deleted.

(Seeburg Briody Deposition Exhibit No. 31 was marked for identification, 6/5/75,C.L.)

MR. ANDERSON: Mr. Goldenberg, may I ask, just for our assistance here, are you prepared to release all of your notes and papers and documents on these negotiations where you and Mr. Briody were negotiating?

MR. GOLDENBERG: I am going to say yes to that. There are certain communications I have had with

the client that I will not release. But any notes that I took at any meeting, I will release those.

It is very sparse production, I assure you, sir. I am not a great note taker.

MR. ANDERSON: We have given you that already. The only thing we have in any way resisted is something that goes beyond that. And I certainly would think --

MR. GOLDENBERG: I do not consider that you have given me that, because you have deleted extensive portions of them.

MR. ANDERSON: Well, the documents will speak for themselves on how extensive the deletions are.

But the point is, then, will you as negotiator with Mr. Briody, release to us the communications you had with your client, deleting, if you will, a portion that you consider to be a legal opinion or sensitive, in the same sense that we will act mutually here?

MR. GOLDENBERG: I will -- I am going to say yes to that. I do not know what is there, quite honestly. As I say, I do not have extensive notes. It is not my practice to make them.

MR. ANDERSON: Well, I do not want to limit it

to your notes, but all documents of any kind.

MR. GOLDENBERG: Communications of any kind. And you understand by releasing any portion of them I do not waive any claim of privilege with respect to the deleted portions.

MR. ANDERSON: Yes. We ask only mutually, then. And, so, you will identify them, so we will know why they were deleted.

MR. GOLDENBERG: I have no problem with that.

MR. ANDERSON: All right. We will take that into account and let you know if we want to go on that basis.

In fact, I guess it is appropriate to go that far based on what we have already produced, as a matter of fact. I would call upon you to go that far, based on what we have produced.

MR. GOLDENBERG: Oh, I cannot accept that on the basis of -- I think you have changed the ground rules to a rather substantial degree in what you have just said.

I think, if I understand you correctly, it seems to me that you are taking advantage of my willingness to produce the things that you asked about. And to say that it amounts to no more than

the offer to produce what you have already produced. And when I indicated my willingness to produce certain things, it was with the understanding that you would consider that as an offer of mutuality with respect to further production, not just to cover those things that have already been produced.

MR. ANDERSON: Well, I think I have now suggested and you have agreed that mutuality is appropriate. And therefore, whatever Seeburg will do, Magnavox would do and vice versa, I take it, in the way of disclosures going to any extent, if that is where we end up.

MR. GOLDENBERG: Well, just to be sure, let me be sure I understand you.

I have indicated my willingness to produce my notes, portions, perhaps. I do not know whether any portions of it are producible. I just do not have it in mind, my correspondence with my client which is not privileged. And I made that offer or indicated my willingness to do that with the understanding in mind that you would take that into consideration as you further examine the documents that you have already produced to me, to see whether you adhere to your present position that things that

have been deleted were appropriately deleted, and perhaps also there are documents that were withheld altogether that I have not seen. I do not know the fact there.

And somehow that has become twisted around. So that my -- you accept my offer, but you have indicated that you feel you have already done all you intended to do. And I am a little mystified on that, Mr. Anderson.

MR. ANDERSON: No. I did not mean to suggest we would not go back and review our documents. But I think what I am suggesting is that whatever is done is mutual.

If Mr. Briody met with you and negotiated a business arrangement or worked towards a business arrangement, I presume with you acting in the same role that he was at the time, and that all of your activities are equally discoverable and your reports to your client are as discoverable as his reports to his client in the memoranda that you have identified here today, that is all I am suggesting now.

I am not suggesting we don't go back and review our documents.

MR. GOLDENBERG: All right, sir. We understand

each other.

MR. ANDERSON: Well, just for our edification, then, in evaluating the whole picture, is that an acceptable proposal to you? Should we consider that whatever we do we will do mutually at whatever level or degree of disclosure?

MR. GOLDENBERG: Yes, sir. Perhaps I am repeating unnecessarily, but neither side waives any privilege with respect to unproduced portions by producing whatever it does produce.

MR. ANDERSON: Yes. I think that was a proposal I made yesterday to which you acquiesced.

Our only problem may be with Mr. Welsh, I think, on that. We can work that out, I think, between the two parties in confidence, if necessary.

BY MR. GOLDENBERG:

Q Mr. Briody, I show you Exhibit 31 and I ask you if you can identify that. Perhaps I can ask you at the same time if you can tell me if certain portions of that document have been blanked out or deleted?

A It appears that there were portions deleted.

MR. ANDERSON: I might state that we have blanked out certain portions of that for the same reasons I have already stated.

BY THE WITNESS:

A (Continuing): It looks, this document, as though it is a copy of something, some documents that I wrote.

Q Could you tell me the occasion or circumstances under which you wrote that document?

A I believe that this document was occasioned by a meeting that I had with you, Mr. Goldenberg, in your office, and reflects certain things that were discussed during that meeting.

Q Do you believe it accurately reflects those certain things?

A To the extent that it refers to specific things, I do not know of any reason why it would not be accurate in referring to them.

Q Do you know the approximate date of that document? I cannot find a date on it.

A You introduced a document yesterday that showed a date of March 6. To the best of my knowledge, this reflects a meeting that was after that time, after March 6, probably a week or so later.

THE WITNESS: Excuse me. Could we take a short recess?

MR. GOLDENBERG: Surely.

(A recess was taken.)

MR. ANDERSON: Let's put on the record the arrangement, then, Don.

In response to your position, Blahuta shouldn't come down for half a day, and you do have a heavy work problem, we are willing to delay any further deposition of Mr. Blahuta until we have received your responses, your supplementary responses to our Request for Admissions and Interrogatories. And hopefully, that will expedite the completion of Blahuta, also.

MR. WELSH: Plus documents, if requested.

MR. ANDERSON: Yes. Now, what we would like of you, in consideration for that, you not complete responses to our Request for Admission and Interrogatories as to all games that Midway has made and sold, plus the documents Mr. Katz has indicated are available today for us.

MR. KATZ: Aren't those the same documents you are referring to?

MR. WELSH: Yes.

MR. ANDERSON: I presume those are the documents you had in mind.

We would actually like it by next week,

Wednesday.

MR. WELSH: We will shoot for it. It has got to be done and we will just try to get it done. We might be able to do it part-way.

But, you know, there is some supplements to previous interrogatories. That is, the first set. And we might be able to, when we finish -- I mean, do those first.

MR. KATZ: There is two sets. There is the first set and then there is the second set, plus the request for admissions.

MR. ANDERSON: I think it is the request for admissions, obviously, that we are most interested in getting and will expedite the Blahuta deposition.

MR. KATZ: Should we take that first?

MR. WELSH: I would take that up first, even though that came after.

MR. ANDERSON: Yes. I would think that came first. And then there is request for interrogatories.

MR. WELSH: I am thinking we have previously agreed to supplement our answers to the first set of interrogatories. So if -- with your agreement there, we will direct our efforts first to the request for admissions and related interrogatories.

MR. ANDERSON: All right. And then I would like firm dates. If you cannot make us a firm commitment for Wednesday, June 11, which we have asked for, then I think we should have another firm date so we can also make a firm date to resume Mr. Blahuta.

Can you be firm for Monday the 16th of June? No, just for response, not to have another deposition, Mr. Rifkin.

MR. WELSH: I will say that now, subject to any other problem that may come up, I think we will be able to do it.

MR. ANDERSON: Okay. It is a firm date. And if it is to be changed, it would be your burden to change it.

MR. WELSH: Yes.

MR. ANDERSON: And then I think we will need a couple of days to digest that.

Should we try to resume Mr. Blahuta on the 19th, June 19? That is a Thursday.

MR. WELSH: Yes. I do not have my calendar, but I do not believe I have any problem.

(Discussion off the record.)

MR. ANDERSON: Put that on the record, that we

are firm, all parties present are firm to resume Elahuta on the 19th, and if necessary go into the 20th. We will try to expedite as much as possible.

(Discussion off the record.)

MR. ANDERSON: I would like that on the record.

MR. KATZ: I have given him a tentatively firm date for the supplementary response to the first set of interrogatories that were discussed in some correspondence between Jim Williams and our firm, on June 23.

MR. ANDERSON: Well, no. You said "tentatively" you will try to have it by the 16th, but not tentatively you will by the 23rd.

MR. KATZ: Right. But it is hard for me to say with all the different contingencies that might occur between now and then. But as far as I know, it is firm, 23rd. As far as I know now, it is firm, 23rd.

MR. ANDERSON: All right. But as in the case of the responses that you will give us on the 16th, I would like your commitment on the supplementary response for the 23rd to be firm, subject to your getting the date changes if it isn't firm, just as it is for the 16th.

(Discussion off the record.)

BY MR. GOLDENBERG:

Q Mr. Briody, I am not sure -- we have been off the record for a substantial amount of time, a number of things have been discussed -- but I believe you testified about the accuracy of Exhibit 31 with respect to the events that are recorded there or statements that are recorded there. Is that correct?

A I think I said -- and if I didn't, I say it now -- that these are notes that I took at a meeting in your office that took place some week or so after an earlier meeting that took place on March 6. And these were notes that I -- that reflected things that were discussed at the meeting.

Q Could you tell me generally, bearing in mind that certain portions have been deleted for the reasons stated by Mr. Anderson previously respecting that, but could you tell me generally what the deleted portions were concerned with, to the extent that you recall?

A No. I do not recall, Mr. Goldenberg, what the deleted portions relate to.

MR. GOLDENBERG: I would like the reporter to mark as Seeburg Briody Deposition Exhibit No. 32 a copy of a letter from Mr. Briody to Mr. Tomlinson of Bally Manufacturing dated April 9, 1974.

(Seeburg Briody Deposition Exhibit No. 32
was marked for identification, 6/5/75.C.L.)

BY MR. GOLDENBERG:

Q Mr. Briody, I show you Exhibit 32. Can you tell me what that is, sir?

A Mr. Goldenberg, could we verify what Exhibit 16 is?

Q Surely.

A No, excuse me. I mean Exhibit 15 was a letter to Mr. Tomlinson that was discussed earlier.

Q No, Exhibit 15 is --

A Oh, that is right. How about Exhibit 16, then? That is a letter to Mr. Tomlinson. Thank you.

(Examining document) Yes. I recall having written a letter such as this on or about April 9 to Mr. Tomlinson, the copy of which is now Exhibit 32.

Q Fine, sir. Thank you.

MR. GOLDENBERG: I ask the reporter to mark as Seeburg Briody Deposition Exhibit 33 a 17-page document, apparently an unexecuted license agreement bearing the designation down at the bottom TAB/lw 31874.

(Seeburg Briody Deposition Exhibit No. 33
was marked for identification, 6/5/75.C.L.)

BY MR. GOLDENBERG:

Q Mr. Briody, I show you Exhibit 33 and ask you if you can identify it; and if you can, would you do so?

A Yes. Mr. Goldenberg, this, as I recall, was a document that was prepared as a possible proposed agreement between Magnavox and Seeburg, which you have presumably uncovered from our files, but which was never transmitted to Seeburg. In other words, it was never communicated.

Q Could you tell me why that was not transmitted?

A As I recall, Mr. Goldenberg, the reason was that you had indicated an interest in licensing three patents, but you had not at this point in time indicated what the three patents were that you would like to be licensed under. So there was no useful purpose in making a proposal.

Q Well, I note on page 2 there are three patents listed as being the proposed subject of the proposed license. What was the basis of putting those three patents down there?

A I believe it was an anticipation on my part, as corporate patent counsel of Magnavox, that this is what you would ultimately decide that you wanted a license under, because you had said at an earlier meeting that you thought you would like to become licensed under three

patents, but you had not as yet specifically identified what they were.

Q So that represented a kind of guess or speculation on your part, an educated guess, perhaps?

A You might say that it was speculation.

Q Would it be correct to interpret the number 31874 down at the bottom as being a date on which that was prepared?

A I should think it was prepared around that date, yes.

Q So that would be March 18, 1974?

A Yes.

MR. GOLDENBERG: I ask that a 17-page document, being an unexecuted license agreement between Magnavox and Seeburg and bearing the indication down at the bottom TAB/lw051674, be marked as Seeburg Briody Exhibit 34.

(Seeburg Briody Deposition Exhibit No. 34 was marked for identification, 6/5/75,C.L.)

BY MR. GOLDENBERG:

Q Mr. Briody, there was no reason for not sending Exhibit 33 to me or some other representative of Seeburg, other than the reason you have indicated?

A I would have to study the document, Mr.

Briody - direct

Goldenberg, to become more aware of what other inadequacies it might have had. I am not certain what all the reasons were, why I would not have sent it.

But it was not an unusual practice for me to update an agreement based on what I considered to be prospectives, so that it would be available.

At a point in time when a decision was made on behalf of Magnavox to make this as a proposal -- since my recollection indicates that it was not transmitted, I never had made a decision that it constituted a proposal that I wished or on behalf of Magnavox in my capacity I felt that I had the responsibility to propose to Seeburg -- there may have been some other reasons in the agreement that did not exactly satisfy me.

Q Well, could you take a moment and turn through and if you find any other reason, could you --

A I think that would involve speculation on my part, Mr. Goldenberg, which would be relatively inaccurate.

This was a document that was in a file, and to the best of my knowledge it was not transmitted.

Q Mr. Briody, I hand you Exhibit 34 and I ask you if you can identify that; and if you can, will you do so?

A Yes, Mr. Goldenberg. This appears to be a proposed agreement that was prepared on or about May 16,

1974, which also, to the best of my recollection, was never transmitted, never communicated.

Q Can you state why, sir?

A My memory is hazy on this. As I recall, I had discussions concerning this agreement with our outside counsel, Mr. Anderson. And that around this time, around that point in time, Mr. Anderson and I had a meeting with you, during which time it was expected that you would specifically delineate or enter into negotiations which might eventuate in an agreement such as this.

Q Can we take it at the bottom of that agreement the numbers indicate the date, approximately when it was prepared?

MR. ANDERSON: He has already testified to that fact.

MR. GOLDENBERG: That is correct. I am sorry.

MR. ANDERSON: He testified that it was prepared on or about May 16, 1974, as my notes show.

MR. GOLDENBERG: Thank you, Mr. Anderson. I have no doubt that he did. It is nice of you to keep that in mind.

I ask the reporter to mark as Seeburg Briony Deposition Exhibit 35 handwritten notes bearing the apparent date of 4/5/74.

(Seeburg Briody Deposition Exhibit No. 35
was marked for identification, 6/5/75,C.L.)

BY MR. GOLDENBERG:

Q Mr. Briody, can you identify Exhibit 35; and if you can, will you, please?

A Yes. These are notes that it appears that I took on or about April 5, 1974, and which I recollect relate to a telephone conversation involving you, Mr. Goldenberg, a Bob Price, a Dick Seeger and myself.

Mr. Price, Mr. Seeger and myself were talking in a conference call to you from Fort Wayne to Chicago.

Q Well, wouldn't it be so, then, that as of the date of that call you had had a fairly definite understanding that if Seeburg -- from me -- that if Seeburg was interested in any patents, it was interested at most in the 284 and the 285 patents?

A Yes. I recall that you gave an indication of this interest in a license under the 480 and the 058 patents. However, I am not certain whether or not it was a final conclusion on your part.

I recall that Mr. Price and Mr. Seeger were discussing with you the relevance of the 480 patent to some of the Seeburg equipment. And I think it was a reasonable conversation.

I am not certain, you know, that you concluded at that point in time in a final sense that you did not wish to have a license under 480 or 057, these other two patents that are referred to categorically in the notes.

I do recall that you were inclined negatively and presented comments to that effect. But I am not certain that you had made a final decision, because this -- some of the notes here indicate that I requested your final decision in the future. And so I gather that you had not made a definite decision as yet.

Q Is it possible, sir, that having that understanding with -- to whatever degree you had it -- was the basis of preparing the draft agreement or proposed agreement in Exhibit 34?

A Well, between April 5, 1974 and May 16, 1974, when this other draft was prepared, Magnavox filed several lawsuits in Chicago. And I recall having taken a two-week trip to Japan.

And I think that possibly this draft agreement which has the date May 16, 1974 on it, and which was never, to my recollection, proposed to Seeburg or to yourself, Mr. Goldenberg, was in preparation for a meeting involving yourself and Mr. Anderson and myself at which we thought we had finally negotiated or exerted our best efforts

towards negotiating an agreement.

Q Could you look at the provisions for the running royalty in that agreement?

A Yes.

Q And could you just read them into the record, please?

A The provision for a running royalty in this agreement, which are referred to in Article 3.02, are, item A, 4 3/4% of the net selling price for licensed products covered by both licensed patents; and A, 4 1/2% of the net selling price for licensed products covered by only one of said licensed patents.

Q Isn't it a fact that the running royalty as proposed or considered in Exhibit 34 is higher -- I am sorry -- is lower than that which was actually given to me as a representative of Seeburg at a later date?

A Yes. I believe it is lower in the proposed license that had never been communicated.

Q Could you tell me the reason for that, sir?

A The reason for that is that I felt that we were negotiating. This was a prospective license agreement that had never been transmitted and obviously as corporate patent counsel on behalf of Magnavox I was interested in negotiating a deal which -- or a licensing arrangement

which would be financially advantageous to Magnavox as the sub-licensor.

MR. ANDERSON: I may have misunderstood the question, but two of the numbers in Exhibit 30, unless I did misunderstand the question, match the numbers in Exhibit 34.

MR. GOLDENBERG: I don't think you misunderstood, sir. And I believe we would agree between us that the numbers that match between Exhibit 30 and 34 are the numbers which would provide a lease for past infringement. The numbers that do not match and are higher in Exhibit 30 are the running royalty for future license.

BY MR. GOLDENBERG:

Q Is that correct, Mr. Briody?

A Yes, that is correct.

Other than that, the royalties for past infringement, which Magnavox proposed to you, Mr. Goldenberg, look as though they are the same as in the draft agreement that was not transmitted.

Q And so the last offer made by Magnavox to Seeburg was an offer of a license agreement with a running royalty which was as high for one patent as the running royalty for a package of seven patents and two

applications made earlier in the year 1974, wasn't it?
5%?

MR. ANDERSON: I object only in that you have already stated that there are two sets of numbers.

MR. GOLDENBERG: On the running royalty for a future license.

MR. ANDERSON: Only for the future, restricting your question to the future?

BY MR. GOLDENBERG:

Q Future license.

A On the one patent, the proposal that we made to you, Mr. Goldenberg, of 5% for one patent is the same as an earlier proposal that had been made to you for a group of patents at 5%.

Q And that group was seven patents and two applications, was it not?

A Yes.

Q And one of the -- the one patent that was the subject of the proposal was included as a part of that group, was it not, earlier group, the 284 or 285?

A I believe so, yes.

Q And the running royalty for your future license for both of the patents, the 284 and the 285, was higher than the earlier offer for the entire group of seven

patents and applications --

A Yes, it was.

Q -- in which the 284 and 285 were included?

A Yes. And as I recall it, Mr. Goldenberg, you had no objection to that. You know, you considered those terms that we proposed to you to represent quite a fair and generally acceptable offer or proposal on our part, because there were other terms that needed to be exacted. And you indicated to Mr. Anderson and myself that you were going to propose something very close to that to our client.

Q Was it accepted by Seeburg?

A No.

Q Was any offer or counter-offer made by Seeburg following this proposal on the part of Magnavox?

A Well, I would say that a counter-proposal was made.

Q Could you state that counter-offer as you recall it?

A I think it might be easier for me to state it if you presented the -- as a document, the letter that was written by Mr. Hughes. If you cannot find it, I will comment on these notes, but --

Q If you would, state it as you can recall it. I cannot put my hands on it right now.

A As I recall the counter-proposal, Mr. Goldenberg, --should we wait and see if you can find it?

Q Go ahead, sir, and state it.

A It involved a payment for past infringement on the part of Seeburg and its subsidiaries. And this was to include, per my interpretation, a Spanish company which Magnavox knew very little about, as far as past infringement we had no idea what their exposure might have been. But the \$20,000 was a settlement for past infringement.

And then, as I recall it, there was a sort of escrowing of royalties in the order of 5% of the net selling price for future exposure to the patents. It was not clear from the letter to me, as I recall it, what patents were referred to by Mr. Hughes in his counter-proposal.

Q Did he refer to specific patents?

A I do not recall.

Q I do not recall that he did, either.

A I do not recall that he did or he didn't.

Q Now, how long were these future royalties, or what were the conditions of the proposed escrow?

A I am not certain. I would like to see the document. I believe that it had some condition based on success in litigation.

Q That is my recollection, sir.

MR. ANDERSON: Could we establish who Mr. Hughes is?

MR. GOLDENBERG: I am not sure we can.

THE WITNESS: I think I might be able to help. I think he is the comptroller of Seeburg Industries, vice president comptroller.

MR. GOLDENBERG: Will you excuse me just a minute?

(Discussion off the record.)

MR. ANDERSON: Let the record show that the five counsel for all of the defendants have caucused in preparation for resumption of testimony of Mr. Briody.

MR. GOLDENBERG: Let the record also show that the question I am about to put did not come out of that caucus and is a result of the conversation between me and the associate in my office, Mr. Rifkin, representing Seeburg, Mr. Anderson.

BY MR. GOLDENBERG:

Q Mr. Briody, I note that Article 15 of Exhibit 33 has an expressed requirement that a label of the type that has been testified about earlier was to be attached to the games contemplated to be sold by Seeburg. Is that

correct?

A Yes.

Q And in that instance, it was an express requirement or a proposed express requirement. Is that not correct?

A Yes, Mr. Goldenberg. Keeping in mind that this agreement or proposed agreement was never transmitted.

Q I understand that, sir.

Would you agree with me that that provision was deleted from Exhibit -- the proposed agreement, Exhibit 34?

A Yes. It appears to be deleted from this other agreement, which makes sense to me. Because during or between the period March 18, 1974 and May 16, 1974 we wrote to other companies, indicating that we were withdrawing the reference to the label from the agreement, or from proposed agreements.

Q Wasn't it included as an express requirement in the same fashion in the proposed agreement sent to J.R.W. Electronics?

A Yes, yes, it was.

But I think, as I mentioned yesterday, Mr. Goldenberg, that they had indicated to me that this was something, you know, that they would like to do.

Q They would like to do?

A Yes. It was not -- It was never my thought that we would ever require any prospective licensee to put a label on their products, unless they wanted to, unless this was something that was not a bother to them from a commercial point of view.

And I believe I had a conversation with you at a meeting, probably before March 18, 1974, that could have led me to conclude that putting the label on products by Seeburg was an advantage and nothing bothersome. I am quite sure from this.

Q That was deleted from the draft of May 15, 1974?

A Yes.

Q Why was that?

MR. ANDERSON: I think he has already answered that.

BY THE WITNESS:

A Because we had decided we would take any references to the label out of our proposed license agreements. I believe I testified to that yesterday.

BY MR. GOLDENBERG:

Q I understand that you had. And I ask about it only because the dates that we are presently talking about are just some confusion as to when that conclusion was

made. In any case, I have your answer.

MR. GOLDENBERG: Mr. Anderson, that is all that I have of Mr. Briody at this time. I do wish to reserve the right, however, to recall him as a witness in the event that we are able to reach an agreement with respect to withheld or documents from which portions have been deleted, or if as a result of some proceedings in court we get the right to get those things. And on the basis of what we see -- on those portions -- if we get to see any that warrant his further examination on this topic.

MR. ANDERSON: I think we are all governed by the Federal Rules in that regard. You know them better than I do.

MR. GOLDENBERG: That is very kind of you, sir. But I do not accept that.

MR. ANDERSON: All right, Mr. Threedy. Do you have any examination of Mr. Briody?

Mr. Welsh, do you have any examination of Mr. Briody?

MR. WELSH: No.

MR. ANDERSON: Mr. Threedy nodded "No." Did you record the nod or a no?

MR. WELSH: No, not at this time. I, of course,

do not intend that by not cross-examining him at this time that I waive any right to call on this witness on behalf of the defendants we represent at some future time.

MR. ANDERSON: Again, in accordance with the Federal Rules of Civil Procedure, I presume.

MR. WELSH: That is the group of rules under which we are operating.

MR. ANDERSON: I understand.

Mr. Goldenberg, would you like to have Mr. Briody read and sign his transcript before any notary public?

MR. GOLDENBERG: That would be fine, sir.

MR. ANDERSON: Is that acceptable to you?

THE WITNESS: Fine.

MR. ANDERSON: I have no cross-examination at this time.

MR. GOLDENBERG: So we will adjourn.

DEPOSITION CLOSED

See attached
 WITNESS' SIGNATURE
 SUBSCRIBED AND SWORN TO
 before me this _____ day of
 _____, A.D. 19____.

 Notary Public

UNITED STATES OF AMERICA)
NORTHERN DISTRICT OF ILLINOIS)
EASTERN DIVISION) SS:
STATE OF ILLINOIS)
COUNTY OF COOK)

We, James Dolan and Charlotte Launer, notaries public in and for the County of Cook and State of Illinois, do hereby certify that THOMAS A. BRIODY was by James Dolan first duly sworn to testify the whole truth and that the above deposition was recorded stenographically by us and was reduced to typewriting under our personal direction, and that the said deposition constitutes a true record of the testimony given by said witness.

We further certify that the said deposition was taken at the time and place specified hereinbefore, and that the taking of said deposition commenced on the 4th day of June, A. D. 1975, at 10:00 o'clock a.m.

We further certify that neither of us is a relative or employee or attorney or counsel of any of the parties or a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, we have hereunto set our hands
and affixed our seals of office at Chicago, Illinois, this
17th day of June, A. D. 1975.

Charbet Laura
Notary Public, Cook County, Illinois
My commission expires: 2/25/76

James P. Dolan
Notary Public, Cook County, Illinois
My commission expires:

Thomas K. Campbell
Official Reporter
UNITED STATES COURT HOUSE
Chicago, Illinois 60604

HArrison 7-6563

Suite 2318

THE MAGNAVOX COMPANY, etc.,
et al.,

Plaintiffs,

-v-

BALLY MANUFACTURING CORPORATION,
etc., et al.,

Defendants.

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)
) Consolidated Civil
) Action Nos.
) 74 C 1030
) 74 C 2510
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C E R T I F I C A T E

This will certify that on June 25, 1975, October 7, 1975, November 8, 1975 and November 18, 1975 the law firm of Neuman, Williams, Anderson & Olson were personally contacted by me re signature of Mr. Thomas A. Briody.

Ms. Judy Spiker, Secretary to Mr. Anderson, informed me on each occasion that she would contact Mr. Briody.

On November 18 Ms. Spiker agreed that if she or Mr. Anderson had not contacted me by December 15, 1975, I should certify and file said transcript.


Thomas K. Campbell